IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9296 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAIKH FIROJ @ BHURU SHAIKH YUSUF SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9296 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on August 13, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining

the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act and statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Patel, learned advocate appearing for the petitioner, has restricted her arguments to the ground that there is lack of contemporaneous material and improper exercise of powers under Section 9(2) of the PASA Act. She further submitted that the offence relates to 11.5.2001 whereas the order is passed on 13.8.2001, i.e. almost three months after the offence. There was no livelink between the activity and the order and the subjective satisfaction arrived at by the detaining authority for detaining the petitioner cannot be said to be genuine. She, therefore, urged that the petition may be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can

be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no contemporaenous material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186.

6. Adverting to the offence registered against the detenu, it relates to May 11, 2001, whereas the order is passed on August 13, 2001, i.e. almost three months after the offence. Therefore, there was no livelink between the activity and the order. The subjective satisfaction for the immediate need for the detaining the detenu, therefore, cannot be considered as genuine in law.

7. It also transpires that some of the documents, particularly, the F.I.R. supplied to the detenu, are not legible. This has affected the right of the detenu of making an effective representation.

8. In view of the above discussion, the petition deserves to be allowed and the same is allowed. The impugned order of detention dated August 13, 2001, passed against the detenu is hereby quashed. The detenu-Shaikh Firoz @ Bhuru Shaikh Yusuf Shaikh is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

9. Direct service is permitted.

[A.L. DAVE, J.]

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